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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 9, 2000

PETITION OF

MCI WORLDCOM, INC.

CASE NO. PUC990244

and

SPRINT CORPORATION

For approval to transfer  
control of Sprint Corporation's  
Virginia Operating Subsidiaries  
to MCI WorldCom, Inc.

FINAL ORDER

On December 17, 1999, MCI WorldCom, Inc. ("MCI WorldCom"), and Sprint Corporation ("Sprint") (collectively referenced as "Joint Petitioners") filed a joint petition with the Virginia State Corporation Commission ("Commission") pursuant to the Utility Transfers Act requesting authority for MCI WorldCom to acquire indirect control of the regulated telecommunications operations of Sprint in Virginia.

On January 18, 2000, the Commission issued an Order extending the period of review to June 14, 2000,<sup>1</sup> directing the Joint Petitioners to publish notice of their petition and providing an opportunity for public comments and requests for

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<sup>1</sup> Pursuant to § 56-88.1 of the Code of Virginia, the Commission was required to either approve, disapprove, or extend the review period of the joint petition within sixty (60) days. The period of review may be extended for an additional 120 days under the statute.

hearing. On January 13, 2000, the Telecommunications Resellers Association ("TRA") filed a Motion for Leave to Intervene for the purpose of monitoring the proceeding. However, the TRA subsequently requested leave to withdraw its motion pursuant to its pleading filed on March 22, 2000. On January 31, 2000, the Town of South Hill filed comments wherein it stated that it had no objection to the merger as long as service quality did not diminish.

On February 22, 2000, both AT&T Communications of Virginia, Inc. ("AT&T"), and SBC Communications, Inc. ("SBC"), filed comments and requests for hearing. On March 8, 2000, the Commission issued an Order denying SBC's and AT&T's requests for a hearing.

### **Merging Parties**

MCI WorldCom is a publicly traded Georgia corporation providing global telecommunications. Through various operating subsidiaries, MCI WorldCom is authorized to offer intrastate interexchange telecommunications services in 50 states and the District of Columbia, including intrastate services within Virginia. Other MCI WorldCom interexchange carrier ("IXC") subsidiaries are authorized by the Federal Communications Commission ("FCC") to offer nationwide domestic interstate services, international services, and nationwide paging, and to provide voice and data communications services to customers

throughout the United States. MCI WorldCom has acquired multi-channel multi-point distribution services ("MMDS") frequency channels in a number of markets and offers international public switched voice, private line, and data services to other carriers and to business, government, and consumer customers, including direct service to approximately 160 foreign countries.

MCI WorldCom subsidiaries are also qualified as competitive local exchange carriers ("CLECs") in all 50 states. In Virginia, MCI WorldCom is the parent of the following certificated operating subsidiaries: MCI WORLDCOM Communications of Virginia, Inc. ("MCI WORLDCOM VA"), MCImetro Access Transmission Services of Virginia, Inc. ("MCImetro VA"), MCI WORLDCOM Network Services of Virginia, Inc. ("MCI WORLDCOM Network VA"), MFN of VA, L.L.C. ("MFN"), Institutional Communications Company-Virginia ("Institutional"), and Virginia MetroTel, Inc. ("MetroTel").<sup>2</sup>

Sprint is a Kansas corporation with subsidiaries offering local exchange services in 18 states, including two incumbent

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<sup>2</sup> MCI WORLDCOM VA is a CLEC, which is authorized to provide local exchange services under Certificate T-359b, as most recently revised January 20, 2000. MCImetro VA is a CLEC and interexchange carrier ("IXC"), which is authorized to provide local exchange services under Certificate T-360 and interexchange services under Certificate TT-22B, as most recently revised September 28, 1995. MCI WORLDCOM Network VA is authorized to provide interexchange services under Certificate TT-3B, as most recently revised January 20, 2000. MFN is both a CLEC and IXC, which is authorized to provide local exchange services under Certificate T-413 and interexchange services under Certificate TT-53A. Institutional and MetroTel are both authorized to provide interexchange services under Certificates TT-13A and TT-20A, respectively.

local exchange companies ("ILECs") in Virginia. Sprint's Virginia ILEC subsidiaries are Central Telephone Company of Virginia ("Centel") and United Telephone-Southeast, Inc. ("United"), which together provide more than 414,000 access lines in 90 exchanges throughout 47 counties. Through various operating subsidiaries, Sprint also has authority to offer intrastate interexchange services in all 50 states and the District of Columbia. Centel and United hold multiple certificates in Virginia.<sup>3</sup> Sprint is also authorized by the FCC to offer nationwide domestic services and international services and to provide voice and data communications services throughout the United States. Sprint and its subsidiaries are also qualified as CLECs in 48 states, including Sprint Communications Company of Virginia, Inc.,<sup>4</sup> in Virginia.

#### **Merger Agreement**

Pursuant to the Agreement and Plan of Merger ("the Merger Agreement") executed October 4, 1999, Sprint will merge into MCI WorldCom and will cease to exist as a separate corporation.

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<sup>3</sup> Centel is an ILEC that holds multiple certificates for its service territories in the central corridor of Virginia and provides interexchange services under Certificate TT-16B, as most recently revised December 16, 1996. United is also an ILEC that holds multiple certificates for its local service territories in the western part of Virginia and provides interexchange services under Certificate TT-31A.

<sup>4</sup> Sprint Communications Company of Virginia, Inc., is both a CLEC and an IXC, providing local exchange services under Certificate T-367 and interexchange services under Certificate TT-12B, as most recently revised March 4, 1992.

Each share of Sprint's common stock will be exchanged for one share of MCI WorldCom's stock. MCI WorldCom will be the surviving corporation, and the merged company will be named WorldCom. The wholly owned subsidiaries of the newly named WorldCom will continue to be the corporate parents of the certificated Virginia telecommunications providers identified above. The certificates held by Sprint subsidiaries will continue to be held by those subsidiaries and will be indirectly controlled by WorldCom.

**Joint Petitioners' Statement of Impact Upon Service and Rates**

Joint Petitioners state that they wish to merge to continue to be competitive in the global telecommunications market, which will require providing integrated offerings combining local telephone service with long distance, wireless, and related services. The Joint Petitioners state that the proposed merger will result in a new entity with an aggregation of assets, expertise, scale, and scope to expand its local and broadband services without any adverse impact on Sprint's existing regulated operations in Virginia.

Joint Petitioners represent in filed affidavits that the merger will not jeopardize the provision of adequate service to the public in Virginia at just and reasonable rates. MCI WorldCom and Sprint state that the merger will have no adverse

impact on Sprint's ILEC operations in Virginia.<sup>5</sup> The Sprint ILECs will remain obligated under the Telecommunications Act of 1996 to continue to negotiate in good faith and to enter into interconnection and resale agreements with competitors and offer nondiscriminatory access to unbundled network elements. Joint Petitioners further represent that the merger will not adversely affect in any way the wholesale or retail rates to customers, including competitors.

With regard to competitive services, Joint Petitioners represent that the merger will have no adverse impact on the competitive long distance marketplace. In addition, Joint Petitioners state that the merger will not adversely affect current CLEC operations, both in terms of service quality and rates. Joint Petitioners also represent that they plan no reductions in previously planned investment in existing local telephone operations in Virginia, thereby assuring that adequate service will be maintained.

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<sup>5</sup> Sprint's Affiant Parrott (Joint Petition, Exhibit 6) states that the Sprint ILECs will continue to be subject to the provisions of the Alternative Regulatory Plan ("Plan") approved by the Commission's Order of October 18, 1994, in Case No. PUC930036, as amended by Order of November 29, 1999, in Case No. PUC970174, 20 VAC 5-401-70. The Sprint ILECs will also remain subject to this Commission's regulation of affiliate transactions as provided in Chapter 4 of Title 56 of the Code of Virginia and the Commission's Order of March 28, 1997, in Case Nos. PUA960046 and PUA960047. Finally, the Sprint ILECs will remain subject to the reporting requirements and regulations as to the level of service quality.

## **Staff Report**

As directed by the Commission's January 18, 2000, Order, the Staff filed its Report on March 28, 2000. The Staff did not object to the proposed merger, subject to the tracking and reporting requirements recommended therein. Specifically, the Staff recommended that:

Joint Petitioners should be directed to track actual costs and savings for five years after the merger is complete and submit an annual report to the Division of Public Utility Accounting detailing the merger costs, merger implementation costs, and merger savings along with detailed explanations and documentation of allocations made for all Virginia entities.

The Joint Petitioners argue in their Response to the Staff Report that the five-year reporting period is unreasonably long, given the expected integration of operations and the probability of future mergers. The Joint Petitioners also question whether the Staff's recommended reporting requirements apply to entities other than Centel and United.

In its Report, the Staff identifies and assesses the appropriate service and rate standards, evaluates the actual and/or potential effects of the merger on both the long distance and local exchange competitive markets, discusses the merger's financial implications, and assesses the potential for new savings and affiliate issues.

The Staff concludes that the requirements in the Rules Governing the Certification of Interexchange Carriers (20 VAC 5-400-60) ("IXC Rules") and the Rules Governing the Offering of Competitive Local Exchange Telephone Service (20 VAC 5-400-180) ("Local Rules"), along with United/Centel's Plan, establish the standards for determining adequate service to the public at just and reasonable rates, as required by § 56-90 of the Code of Virginia.<sup>6</sup> The Staff notes that the definition of just and reasonable rates in the interexchange marketplace in Virginia is "market based" or "competitively determined."

The Staff further notes that the Commission has never established specific service quality standards for IXCs. However, the Commission does monitor IXC consumer complaints and may investigate excessive complaint levels and take appropriate action.<sup>7</sup> In the competitive interexchange market, consumers in Virginia may always choose service from one of the numerous other carriers if they are dissatisfied with the rates, services, or service quality provided by a specific carrier.

The Staff reports that, overall, it does not believe that the merger would have a direct impact on the rates and/or service quality currently provided by either the Centel or

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<sup>6</sup> Section 56-90 requires that the Commission be satisfied "that adequate service to the public at just and reasonable rates will not be impaired or jeopardized" by granting the proposed merger.

<sup>7</sup> See 20 VAC 5-400-60, § H.



United ILEC subsidiaries that continue to be regulated under their alternative regulatory plan.

**Comments by AT&T and SBC**

AT&T argues that the merger should not be approved "because it will perpetuate and exacerbate the price-affecting and competition-distorting consequences of Sprint's exceedingly high intrastate access charges." (AT&T Comments at p. 2). As AT&T recognizes in its Comments, the Commission is currently investigating Sprint's intrastate access charges. AT&T seeks to interrupt this merger review until our investigation of Sprint's access charges is completed. We decline to dismiss the joint petition herein with directions to refile after the conclusion of our investigation of Sprint's intrastate access charges in Case No. PUC000003, as AT&T requests. AT&T next argues that competition will be distorted when WorldCom, the surviving carrier, will be able to avoid paying (i.e., internalize) access charges for calls originating or terminating on access lines provided by Centel and United. As an alternative to first setting access charges at cost before approving the merger, AT&T also proposes that Sprint's intrastate access charges be reduced to match interstate access rates. The Commission declines to condition this merger approval upon this request. However, we will proceed with our investigation of Sprint's intrastate access charges in Case No. PUC000003.

SBC opposes the proposed merger as threatening to diminish competition in the markets for long distance, local, and Internet services. SBC uses the Herfindahl-Hirschman Index, a measure of market concentration, to describe the anti-competitive effects of the proposed merger on the long distance market. With respect to the local market, SBC states that the merger will lead to decreased competition through diminished investment in local facilities. The combination of Internet backbone facilities owned by MCI WorldCom and Sprint will create a dominant provider, also making competition difficult or even impossible, according to SBC.

### **Findings**

We find that the proposed merger will not impair or jeopardize adequate service at just and reasonable rates. The potential anti-competitive effect raised by the commenting parties is alleviated by our continued oversight of the long distance market through our IXC Rules and the development of further competition as described in Part B of the Staff Report.

With regard to the Staff's reporting recommendation, we find that it should be accepted; however, it should apply to United and Centel only. In the event that future mergers make such reporting requirements unreasonable, the Joint Petitioners may apply for relief at that time.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) The Joint Petition is hereby approved.

(2) The Joint Petitioners are hereby ordered to comply with the Staff's recommendation to track and report annually for the next five (5) consecutive years after merger completion the details of actual merger costs, merger implementation costs, and merger savings, along with detailed explanations and documentation of allocations made for Centel and United.

(3) The Joint Petitioners shall remain regulated under the laws of the Commonwealth and Commission Orders and Rules, the same after completion of the merger as before.

(4) There being nothing further to come before the Commission, this matter is dismissed.